PERMODALAN NEGERI SELANGOR BHD v. MENTERI KEWANGAN; KETUA PENGARAH HASIL DALAM NEGERI (PROPOSED INTERVENER) & OTHER APPLICATIONS

HIGH COURT MALAYA, KUALA LUMPUR
NOORIN BADARUDDIN J
[JUDICIAL REVIEW NOS: WA-25-343-11-2020, WA-25-289-10-2020 & WA-25-69-03-2021]
12 DECEMBER 2022

Abstract – *The Inland Revenue acts as an agent to collect taxes for the Ministry of Finance/Government; its interest is purely financial. The Director General of Inland Revenue is not, in any way, involved in the decision-making process under ss. 135 and/or 127(3A) of the Income Tax Act 1967.*

CIVIL PROCEDURE: *Intervention – Application for – Judicial review to review decision-making process of Minister of Finance – Application by Director General of Inland Revenue ('DGIR') to intervene in judicial review – Whether DGIR fulfilled test of being 'proper person' to intervene at leave stage – Whether DGIR involved in decision-making process – Whether application premature – Rules of Court 2012, O. 53 r. 8*

The applicants had filed for leave to apply for an order of *certiorari* for the respondent to exercise his powers under ss. 135 and/or 127(3A) of the Income Tax Act 1967 ('ITA') to set aside or exempt the taxes raised by the Director General of Inland Revenue ('DGIR') against the applicants on the grounds that the taxes raised were illegal, void, unlawful and/or in excess of authority, unreasonable, irrational and a denial of the legitimate expectation of the applicants. In these applications, the DGIR sought to intervene in the applicants' judicial review on the ground that he was needed in the proceedings based on the following reasons: (i) to assist the court to get the clear context, facts and information based on the documents to enable all the issues in question to be decided accordingly; (ii) to assist the court in explaining and/or adding the relevant laws applicable including and not limited to the ITA but also other relevant laws; (iii) it was fair and appropriate for the applicants' application for judicial review to be decided with the submissions from the DGIR as early as at the leave stage; (iv) the arising issues could easily be determined with the presence of the DGIR as all the documents related were between the applicants and the DGIR; (v) if the DGIR was not allowed to intervene in these proceedings, he would be prejudiced as he would be unable to defend the assessment; and (vi) to protect and ensure the interest of the Federal Government and public at large. Objecting to the DGIR's applications, the applicants argued that: (i) the DGIR failed to fulfil the test of being a 'proper person' to intervene at the leave stage; (ii) the judicial review applications at hand were solely to review

A the decision-making process of the respondent, under ss. 135 and/or 127(3A) of the ITA; and (iii) the DGIR's application at this stage was premature on the sole basis that the DGIR was not, in any way, involved in the decision-making process under ss. 135 and/or 127(3A) of the ITA.

B **Held (dismissing applications):**

(1) The DGIR's applications ought to be ventilated at the substantive stage. To allow the DGIR's applications at this stage would run the risk of causing a delay to the applicants' leave applications where the ordinary threshold was low with the sole question being whether the applications were frivolous and whether there was an arguable case. (para 13)

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(2) Since the DGIR did not state that he was to advise the respondent or was actively involved in assisting the respondent on matters arising from the decision-making process of the latter, pursuant to ss. 127(3A) and/or 135 of the ITA, the DGIR, at best, had only an indirect interest to the applicants' applications and the reasons given by the DGIR were insufficient to show that he was a proper person with direct interest and any additional argument that the DGIR wished to raise could be raised through the respondent. (para 16)

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(3) At this stage, the DGIR did not fulfil the 'proper person' test under O. 53 r. 8 of the Rules of Court 2012. A 'proper person' is a person having direct interest. The DGIR's interest was purely financial. The Inland Revenue was just an agent to collect taxes for the Ministry of Finance/Government. Financial interest was not a direct interest. (paras 17 & 18)

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F **(4)** The DGIR's applications at this stage was premature on the sole basis that the DGIR was not, in any way, involved in the decision-making process under ss. 135 and/or 127(3A) of the ITA. The DGIR had no say and role in the respondent's decision-making process. At the leave stage, the court had yet to decide whether there was, in fact, a 'decision' made by the respondent in the first place and whether such 'decision' was susceptible to judicial review. It was solely between the respondent and the applicants to ventilate this issue. Furthermore, pursuant to ss. 127(3A) and 135 of the ITA, the discretion was vested solely in the Minister, and not the DGIR and, as such, the power exercised under these provisions were vested exclusively in the respondent alone. (paras 19 & 20)

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Case(s) referred to:

Ang Ming Lee & Ors v. Menteri Kesejahteraan Bandar, Perumahan Dan Kerajaan Tempatan & Anor And Other Appeals [2020] 1 CLJ 162 FC ***(refd)***

I *Chin Mee Keong & Ors v. Pesuruhjaya Sukan [2007] 5 CLJ 363 CA* ***(refd)***

Ketua Pengarah Hasil Dalam Negeri v. Rainforest Heights Sdn Bhd [2019] 1 LNS 513 HC ***(refd)***

Krishnadas Achutan Nair & Ors v. Maniyam Samykano [1997] 1 CLJ 636 FC ***(refd)***

Majlis Agama Islam Selangor v. Bong Boon Chuen & Ors [2009] 6 CLJ 405 FC ***(refd)***
Petronas Penapisan (Terengganu) Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri [2014] MSTC 30-078 ***(refd)***
Port Dickson Power Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri [2012] MSTC 30-045 ***(refd)***
Puncak Niaga Construction Sdn Bhd v. Menteri Kewangan Malaysia [2021] 1 LNS 1032 HC ***(foll)***
QSR Brands Bhd v. Suruhanjaya Sekuriti & Anor [2006] 2 CLJ 532 CA ***(refd)***
R v. Rent Officer Service, ex parte Muldoon; R v. Rent Officer Service, ex parte Kelly [1996] 3 All ER 498 ***(refd)***
Teh Guat Hong v. Perbadanan Tabung Pendidikan Tinggi Nasional [2018] 2 CLJ 762 CA ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 3
Income Tax Act 1967, ss. 127(3A), 135
Rules of Court 2012, O. 53 r. 8

Other source(s) referred to:
De Smith's Judicial Review of Administrative Action (1995), p 357
VG Ramachandran's Law of Writs, 6th edn, vol 1, p 683

(Judicial Review No: WA-25-343-11-2020)
For the applicant - S Saravana Kumar & Yu Yun Lei (pupil in chambers); M/s Rosli Dahlan Saravana Partnership
For the Attorney General's Chambers - Liew Horng Bin; SFC
For the proposed intervener - Normareza Mat Rejab; SRC & Mohd Shafuddin Hasan; RC

(Judicial Review No: WA-25-289-10-2020)
For the applicant - S Saravana Kumar & Yap Wen Hui; M/s Rosli Dahlan Saravana Partnership
For the Attorney General's Chambers - Liew Horng Bin; SFC
For the proposed intervener - Normareza Mat Rejab; SRC

(Judicial Review No: WA-25-69-03-2021)
For the applicants - S Saravana Kumar & Dharshini Sharma; M/s Rosli Dahlan Saravana Partnership
For the Attorney General's Chambers - Nik Isfahanie Tanim W Ab Rahman; SFC

Reported by Najib Tamby

JUDGMENT

Noorin Badaruddin J:

[1] These are the applications by the Director General of Inland Revenue (the "DGIR") to intervene in the applicants' judicial review under O. 53 r. 8 of the Rules of Court 2012 ("ROC"). The applicants have filed the applications for leave to apply for an order of *certiorari* for the respondent to exercise his powers under s. 135 and/or s. 127(3A) of the Income Tax Act 1967 ("ITA") to set aside or exempt the taxes raised by the DGIR against

A the applicants on the grounds that the taxes raised are illegal, void, unlawful and/or in excess of authority, unreasonable, irrational and denial to the legitimate expectation of the applicants.

Summary Of The DGIR's Contentions

B **[2]** It is contended by the DGIR, that he is needed in this proceeding based on the following reasons:

(i) to assist the court to get the clear context, facts and information based on the documents to enable all the issues in question be decided accordingly;

C (ii) to assist the court in explaining and/or adding the relevant laws applicable including and not limited to ITA but also other relevant laws;

(iii) it is fair and appropriate for the applicants' application for judicial review to be decided with the submission from the DGIR as early as at
D the leave stage;

(iv) the issues arise can easily be determined with the presence of the DGIR as all the documents related are between the applicants and the DGIR;

(v) if the DGIR is not allowed to intervene in this proceeding as the
E proposed intervener, the DGIR will be prejudiced as it is unable to defend its assessment;

(vi) the DGIR would be of great assistance to the court for a better understanding in relation to the facts and the relevant laws. Any decision made by the court will affect the taxation laws and the nation's
F collection of tax. Thus, there is a need for the DGIR to be included in the judicial review proceeding; and

(vii) to protect and ensure the interest of the Federal Government and public at large.

Summary Of The Applicants' Contentions

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[3] In summary, the applicants take the position that the DGIR failed to fulfil the test of being a 'proper person' to intervene at this leave stage. The applicants submit that the current judicial review application at hand is solely to review the decision-making process of the respondent under s. 135 and/
H or s. 127(3A) of the ITA and that the DGIR's application at this stage is premature on the sole basis that the DGIR is not in any way involved in the decision-making process under s. 135 and/or s. 127(3A) of the ITA.

Findings

[4] The sole issue to be decided by this court is whether the DGIR ought
I to be allowed to intervene at this leave stage of the judicial review application by the applicants.

[5] At the outset it must be stated this court in its earlier decision in *Puncak Niaga Construction Sdn Bhd v. Menteri Kewangan Malaysia* [2021] 1 LNS 1032 ("*Puncak Niaga*") where similar issue herein arose had dismissed the DGIR/proposed intervener's application to intervene in the applicants' judicial review application therein. On appeal to the Court of Appeal, this court's decision was overturned and the DGIR was allowed to intervene in the taxpayer's judicial review application against the same respondent herein. The taxpayer in *Puncak Niaga* then appealed against the decision of the Court of Appeal to the Federal Court with these questions framed as questions of law:

(i) whether the DGIR's application to intervene in the judicial review application commenced against the Minister of Finance be allowed at the leave stage application;

(ii) whether the DGIR's application to intervene in the judicial review application commenced against the Minister of Finance should only be allowed upon the leave application be heard and granted.

[6] However, the Federal Court had sustained the DGIR's preliminary objection which grounded on the legal position that where matters involving intervener's application, it is not a 'decision' which is appealable by virtue of s. 3 of the Courts of Judicature Act 1964. The Federal Court did not go further than the preliminary objection raised by the DGIR/proposed intervener. In other words, the questions of law raised by the taxpayer in *Puncak Niaga* were not addressed by the Federal Court.

[7] In the present matter, having been made aware of the apex courts decisions, the question is whether this court is bound to follow the decision of the Court of Appeal in *Puncak Niaga* and allowed the DGIR's applications herein.

[8] Firstly, the similar issue raised in *Puncak Niaga* and the present matter have not been resolved by the Federal Court. Therefore, the Federal Court's decision in *Majlis Agama Islam Selangor v. Bong Boon Chuen & Ors* [2009] 6 CLJ 405; [2009] 6 MLJ 307 ("*MAIS*") is still good law. In *MAIS* the applicants in that case took a suit against Majlis Bandaraya Shah Alam in relation to a setting up of a Muslim burial ground in Shah Alam. MAIS applied to be an intervener on the grounds that they are an interested person as they are a statutory body responsible and tasked to oversee the administration of Islam in the State of Selangor. Despite the fact that MAIS's duty to promote and protect the interest of Muslims and the Islamic community of the State of Selangor, the Federal Court disallowed MAIS's application to intervene and held that MAIS has an indirect interest, insufficient to fulfil the test of a proper person. The Federal Court through the judgment of Zulkefli Makinudin FCJ (as he then was) held as follows:

A [22] It is my view that the appellant at best has an indirect interest. In the affidavit in support of its application its interest (other than wakaf) is premised *inter alia* on the following points as spelled out under the provisions of ss. 4 to 7 of the Enactment:

(i) it is a statutory body;

B (ii) It oversees the administration of Islam in the state of Selangor;

(iii) It has a duty to promote and protect the interest of Muslims and the Islamic community in the state.

[23] It is my finding that the basis of the appellant's purported interest in the present judicial review proceedings has been stated in terms which C would appear to go beyond the scope of the provisions of the Enactment relied upon. Matters of local government do not fall within the objects of MAIS. MAIS had nothing to do with the decisions under challenge in the judicial review proceedings. In any event, it is not directly affected by the decisions sought to be reviewed.

D **[9]** Secondly, although the Court of Appeal had overruled this court's decision in *Puncak Niaga*, without the benefit of the grounds of judgment which is not available as at the hearing date of the present matter, the reasons for the decision of this court being overruled remain speculative. Learned counsel for the DGIR argued that the reasons for this court's decision in E *Puncak Niaga* being overruled is clear as the only issue raised before the Court of Appeal is whether the DGIR can intervene at the leave stage of a judicial review application. Learned counsel argued that since the DGIR's appeal was allowed by the Court of Appeal, it therefore can be understood that the DGIR can intervene in these present applications even at the leave stage.

F **[10]** This court disagrees with the submission. In exercising a discretionary power under O. 53 r. 8 of the ROC whether to allow a party to intervene and where there is no written grounds by the Court of Appeal in *Puncak Niaga*, the question remains whether the DGIR can automatically be allowed to intervene in every application for judicial review relating to tax matters G where the "decision" relates to the respondent and the respondent alone at the leave stage.

[11] In *Petronas Penapisan (Terengganu) Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* [2014] MSTC 30-078, Rohana Yusuf J (as Her Ladyship then was) had held that:

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> Under the principle of *stare decisis*, it was held in the case of *S Selvaraja T Singarathevar v. Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Anor* [1997] 2 CLJ Supp 275 that the court below is bound to follow the *ratio decidendi* of a case. In view of the fact that there is no written grounds of judgment the *ratio decidendi* in *Nilai Cipta* cannot be equivocally I ascertained. Thus any attempt to rely on it is just based on speculation. In view of that position, in my considered view the decision by Court of Appeal in *PCEO* which followed *American Leaf* is still good authority and the SCIT should not ignore them.

[12] Later in *Ketua Pengarah Hasil Dalam Negeri v. Rainforest Heights Sdn Bhd* [2019] 1 LNS 513, Nordin Hassan J (as His Lordship then was) had agreed with the decision of Abang Iskandar J (as His Lordship then was) in *Port Dickson Power Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* [2012] MSTC 30-045 which was overruled by the Court of Appeal and gave reason as follows:

> [12] On this issue, I take note that the case of *Port Dickson Power Sdn Bhd* (*supra*) has been overruled by the Court of Appeal but without the benefit of the grounds of judgment which is not available as of to date, I cannot speculate the reasons of the said decision.

[13] This court is of the same view that without the written grounds of judgment by the Court of Appeal, the *ratio decidendi* of *Puncak Niaga* cannot be ascertained. It must be borne in mind that this court is not saying that the DGIR cannot intervene in the applicants' judicial review applications. It is of the considered view that the DGIR's application should be ventilated at the substantive stage. Apart from the finding that the DGIR's legal reasoning would not be in access to the respondent's argument and that both their arguments will be similar, to allow the DGIR's applications at this stage will run the risk of causing a delay to the applicants' leave application where the ordinary threshold is low with the sole questions being whether the application is frivolous and whether there is an arguable case. In *MAIS*, the Federal Court had highlighted the importance of the speedy disposal of such matter and the following excerpt of the judgment is instructive:

> [4] Now, the court is blamed for the delay. The public gets frustrated. In my opinion, the court could perhaps have just gone ahead and made a decision on the application for administrative review. The question of whether the appellant should be made a party can be decided and appealed together if necessary. These delays have caused unnecessary anguish over the people for whom the appellant is supposed to be acting for.
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> [5] Courts should be more diligent in dealing with such cases. Parties expect speedy disposal of reviews. That is why applications for review of administrative decisions are provided by way of *certiorari* or *mandamus* instead of by way of a writ. The law provides for a simple way of disposing these cases. Instead of a speedy disposal of a review application, this case has taken as long as it would in a hearing of a writ. Delays such as this can also cause a hold up in the implementation of national development and losses to the people such as the developers when there is an application for review of planning permissions granted by public authorities.

[14] Even the argument of the existence of a domestic remedy which forms part of the DGIR's argument to intervene, ought not be dealt with at this stage. In *QSR Brands Bhd v. Suruhanjaya Sekuriti & Anor* [2006] 2 CLJ 532; [2006] 3 MLJ 164 and *Chin Mee Keong & Ors v. Pesuruhjaya Sukan* [2007]

A 5 CLJ 363, the Court of Appeal and the Federal Court had held that the existence of a domestic remedy only falls to be decided at the merit stage of the proceedings, and not at the leave stage.

[15] It must be emphasised that the decision of this court in *Puncak Niaga* was premised on the decision of the Federal Court in *MAIS*. In *Puncak Niaga* this court was of the view that although it cannot be disputed that the DGIR is an arm of the Executive as a tax collecting agent for the Government and that he has the role to protect the interest of the Federal Government and public at large in terms of tax collection, in regards to the leave application for judicial review filed by the applicants therein the sole question to be determined is the exercise of the discretionary power of the respondent and the respondent alone.

[16] Since the DGIR does not state that he is to advise the respondent or has actively involved in assisting the respondent on matters arising from the decision-making process of the latter pursuant to s. 127(3A) and/or s. 135 ITA, this court is of the considered view that the DGIR at best has only an indirect interest to the applicants' application and that the reasons given by the DGIR are insufficient to show that he is a proper person with direct interest and any additional argument that the DGIR wishes to raise can be raised through the respondent.

[17] At this stage this court is of the considered view that the DGIR does not fulfil the 'proper person' test under O. 53 r. 8 of the ROC. In *MAIS* the Federal Court had held:

> [24] I am of the view the use of the phrase 'proper person' in O. 53 r. 8(1) of the RHC must be read as referring to persons with a direct interest. In this regard the test for joinder as a party in judicial review was considered by the House of Lords in *R v. Rent Officer Service*, *ex parte Muldoon*; *R v. Rent Officer Service, ex parte Kelly* [1996] 3 All ER 498. It was concluded in that case that an indirect interest, even on the part of the Secretary of State, was not sufficient to justify joinder. I am of the view the same test would apply to the appellant in the present case. Unlike the position under the UK Civil Procedure Rules ('CPR'), the right of 'any person to be heard in opposition' in our O. 53 r. 8(1) of the RHC is qualified by the requirement of that person being a 'proper person'. Rule 54.17.1 of the CPR states 'any person may apply to file evidence or make representation at the hearing of the judicial review'. There is therefore a significant qualification under our O. 53 r. 8(1) of the RHC 1980 which indicates some level of interest. It does not stand to reason for a party not having any direct interest to be allowed to be joined as a party, more so in the light of the nature of the jurisdiction being exercised in judicial review proceedings.

[18] The meaning of "proper person" has been explained in the case of *MAIS* as a person having direct interest. The DGIR's interest is purely financial. The Inland Revenue is just an agent to collect taxes for the Ministry

of Finance/Government. It is of the considered view that financial interest is not a direct interest. In *MAIS*, the Federal Court had cited the House of Lords decision in *R v. Rent Officer Service, ex parte Muldoon; R v. Rent Officer Service, ex parte Kelly* [1996] 3 All ER 498 where it was concluded in that case that an indirect interest, even on the part of the Secretary of State who has to make payment to Muldoon and Kelly was not sufficient to justify joinder.

[19] Since the current judicial review applications at hand is solely to review the decision-making process of the respondent under s. 135 and/or s. 127(3A) of the ITA and the provisions allow any person such as the applicants to seek exemption from the Minister of Finance, the DGIR's application at this stage is premature on the sole basis that the DGIR is not in any way involved in the decision-making process under s. 135 and/or s. 127(3A) of the ITA. The DGIR has no say and role in the respondent's decision-making process. It is pertinent to note that at the leave stage, the court has yet to decide whether there is in fact a "decision" made by the respondent in the first place and whether such "decision" is susceptible to judicial review. It is solely between the respondent and the applicants to ventilate this issue.

[20] A proper scrutiny of the provisions of ss. 127(3A) and 135 of the ITA show that the discretion is vested solely in the Minister and not the DGIR and as such the powers exercised under these provisions are vested exclusively in the respondent alone. Sections 127(3A) and 135 of the ITA are reproduced:

> Section 127
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> (3A) The Minister may, in any particular case exempt any person from all person from all or any of the provision of this Act, either generally or in respect of any income of a particular kind or any class of income of a particular kind.
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> Section 135
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> The Minister may give to the Director General directions of a general character (not inconsistent with this Act) as to the exercise of the functions of the Director General under this Act; and the Director General shall give effect to any directions so given.

[21] It is clear from the express wordings of ss. 127(3A) and 135 of the ITA, Parliament had empowered the Minister to make certain decisions under the ITA in respect of tax matters. It is also clear that Parliament did not intend to confer any discretion to the DGIR to intervene in the Minister's decision-making process. The Federal Court in *Krishnadas Achutan Nair & Ors v. Maniyam Samykano* [1997] 1 CLJ 636; [1997] 1 MLJ 94 had held that:

> The function of a court when construing an Act of Parliament is to interpret the statute in order to ascertain legislative intent primarily be reference to the words appearing in the particular enactment. *Prima facie*, every word appearing in an Act must bear some meaning. For Parliament does not legislate in vain by the use of meaningless words and phrases.

[22] It is trite law that a discretionary power must be exercised by the person to whom Parliament had vested the power (see: *De Smith's Judicial Review of Administrative Action* (1995), p. 357; *Wade Administrative Law*, 9th edn). Both authors are cited in *VG Ramachandran's Law of Writs*, 6th edn vol. 1 at p. 683 as follows:

> A discretionary power must, in general, be exercised only by the authority to which it has been committed. It is a well-known principle of law that when a power has been confided to a person in circumstances indicating that trust is being placed in his individual judgment and discretion, he must exercise that power personally unless he has been expressly empowered to delegate it to another.
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> The very object of conferring a power on a particular administrative authority is that the power must be exercised by that authority and cannot be sub-delegated to any other authority or official.
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> Wade also says:
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> An element which is essential to the lawful exercise of power is that it should be exercised by the authority upon whom it is conferred and by no one else. The principle is strictly applied, even where it cause administrative inconvenience, except in cases where it may reasonably be inferred that the power tvas intended to be delegable. Normally the courts are rigorous in requiring the power to be exercised by the precise person or body stated in the statute, and in condemning as *ultra vires* actions taken by the agents, sub-committee or delegates, however expressly authorised by the authority endowed with the power.

[23] The above passages have been cited by the Federal Court in the case of *Ang Ming Lee & Ors v. Menteri Kesejahteraan Bandar, Perumahan Dan Kerajaan Tempatan & Anor And Other Appeals* [2020] 1 CLJ 162 where the court held:

> [43] It was argued for the developer that the Minister has delegated his power to the Controller to make a decision under reg. 11(3). This argument in our view cannot be sustained. If the Minister has delegated his power to the Controller to make a decision under reg. 11(3), there should not and could not be an appeal process from the decision of the Controller to the Minister as it is akin to an appeal to the Minister against his own decision. Regulation 12 on the appeal would be rendered superfluous and redundant.
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> [44] Insofar as delegation of powers is concerned, we are mindful of s. 5 of the Delegation of Powers Act 1956, which reads:
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> Where by any written law a Minister is empowered to exercise any powers or perform any duties, he may, subject to section 11, by notification in the *Gazette* delegate subject to such conditions and restrictions as may be prescribed in such notification the exercise of such powers or the performance of such duties to any person prescribed by name or office.

> [45] It must be noted that while s. 5 expressly allows the Minister to delegate his powers or duties to any person described by name or office, such delegation must be made by notification in the *Gazette*. In the present case, we observe that there is no notification published in the *Gazette* which means that there is no delegation of powers by the Minister to any other person of his duties under the Act pursuant to the Delegation of Powers Act.

[24] The wordings of ss. 127(3A) and 135 of the ITA are clear and unambiguous. The power or authority to decide on whether to grant an exemption is vested exclusively on the respondent. Section 127(3A) ITA clearly states that the Minister can exempt any person from all or any provision of the Act in respect of any income whilst s. 135 ITA clearly states that the Minister can give directions of a general character. It is therefore clear that the respondent must exercise that power personally since the trust is being placed upon him.

[25] In *Puncak Niaga* as well as in the present matter, the judicial review application stems from the respondent's failure in replying to the applicants' letter requesting for the respondent to exercise his power vested in him under s. 127(3A) and/or s. 135 of the ITA and it is obvious that the DGIR was not involved in the 'non-reply' to the request by the applicants. Nowhere can it be shown that the DGIR is involved in the alleged 'decision-making' process of the respondent under s. 135 and/or 127(3A) ITA. As such, the DGIR cannot be said to have a direct interest in the matter and with respect, since there is no written judgment by the Court of Appeal in *Puncak Niaga* and relying on the Federal Court's decision in *MAIS*, this court adopts the same view in *Puncak Niaga*.

[26] It must be reiterated that the application to intervene by the DGIR should be ventilated at the substantive stage. In accordance with the Court of Appeal's decision in *Teh Guat Hong v. Perbadanan Tabung Pendidikan Tinggi Nasional* [2018] 2 CLJ 762; [2015] 3 AMR 35, there is no necessity to go into the merits, of the case at leave stage. As such, the DGIR's application should not be allowed as the merits of case would only be raised at substantive stage.

Conclusion

[27] Premised on the above, the DGIR's applications herein were dismissed.